



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 20, 1992

Honorable Mike Driscoll  
Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

Letter Opinion No. 92-77

Re: Collection and expenditure of the  
records management fee authorized by  
section 118.011(b)(2), Local Government  
Code (ID# 17073, ID# 17285)

Honorable Dale W. Elliott  
Potter County Attorney  
303 Courthouse  
Amarillo, Texas 79101

Gentlemen:

You request our opinion regarding the collection and expenditure of the "records management fee" authorized by section 118.011(b) of the Local Government Code. In Letter Opinion 92-07 (1992), we said that this fee could be imposed at the discretion of the county clerk; that any fees collected should be deposited with the county treasurer in a separate account; and that, while the commissioners court was responsible for allocating all county funds, that body could expend funds collected under section 118.011(b) only "for specific records management and automation projects."

Mr. Elliott asks whether funds collected under section 118.011(b) are limited to expenditure for "specific records preservation and automation projects" only in the office of county clerk. Section 118.0216 of the Local Government Code declares:

The fee for 'Records Management and Preservation' under Section 118.011 is for the record management and preservation services *performed by the county clerk* after the filing and recording of a document in the records of the office of the clerk. The fee must be paid at the time of the filing of the document. The fee may be used only to provide funds for specific records preservation and automation projects.

Local Gov't Code § 118.0216 (emphasis added). The italicized language, *supra*, indicates that funds collected under this provision may be used only for "specific records management and preservation services" which are "performed by the county clerk." Accordingly, we conclude that expenditure of funds under section 118.011(b) is limited to those "specific records preservation and automation projects" which are performed in the office of the county clerk.

Mr. Driscoll asks three questions about the assessment of the fee:

1. Whether the County Clerk is authorized to collect [the fee] on *all* documents filed in her office? If not, then on which documents is [she] authorized to collect said fee?
2. Whether the County Clerk may impose [the fee] on certain documents filed in her office while choosing to exempt other documents from such fee?
3. Whether the County Clerk may impose [the fee] at differing rates, up to the \$5 statutory limit, for different types of documents filed in her office?

The accompanying brief from Mr. Driscoll's office concludes that 1) "all documents filed in the County Clerk's office should have the records management and preservation fee imposed upon them"; 2) that she may not impose it on certain documents while exempting its collection on others; and 3) that she may not impose differing amounts on different documents, but must "impose a \$5 records management and preservation fee on all documents filed in her office."

We have found nothing in the legislative history of Senate Bill 770, Acts 1991, 72d Leg., ch. 587, § 1, at 2105, which enacted the \$5.00 fee at issue here, which would indicate the legislative intent in this matter. Therefore, we are of the view that the conclusions reached in the brief filed by Mr. Driscoll are reasonable and we concur in lieu of any evidence or argument to the contrary.

### S U M M A R Y

The "records management and preservation fee" imposed by section 118.011(b) of the Local Government Code may be used

only for those "records management and preservation" projects performed in the office of the county clerk. If the records management and preservation fee is imposed upon any documents filed in the county clerk's office, it must be imposed on all of them. The county clerk may not impose the fee on certain documents while exempting its collection on others. The county clerk may not impose differing amounts on different documents.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Rick Gilpin".

Rick Gilpin  
Deputy Chief  
Opinion Committee